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10/664,389	09/17/2003	Thomas Vieweg	VD01/08	4424

7590 12/17/2004  
Edward P. Dutkiewicz  
640 Douglas Avenue  
Dunedin, FL 34698

EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/664,389

Applicant(s)

VIEWEG, THOMAS

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004 and 01 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. The drawing replacement sheet filed on 11/01/2004 has been approved.
2. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 39-40, how is the phrase "an inwardly extending portion" intended to relate to the previously claimed (an inwardly extending portion) (see claim 1, line 37)? In claim 1, line 41, use of terminology in parenthesis makes the claim indefinite as to whether or not the terminology in the parenthesis is or is not intended to be limiting to the claim language. In claim 1, line 41, use of the phrase "preferably 103 degrees" makes the claim indefinite as to whether the claim is intended to be limited to 100 to 105 degrees or to 103 degrees.

In claim 2, lines 12-13, the phrase "the inwardly extending portion" lacks an antecedent. In claim 2, line 13, the phrase "the annular recess" lacks an antecedent. In claim 4, lines 3-4, the phrase "the central section" lacks an antecedent. Claim 1, line 6, contains unmatched parenthesis.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Lewis.

Lewis discloses a cartridge magazine system comprising:

- |  |                 |
|--|-----------------|
| a) a hollow case with side, front, and rear faces; | A               |
| b) a base plate;                                   | between x and y |
| c) a spring;                                       | attached to B   |

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d) a steel follower; and

B, d, f

e) a hemispherical dimple located to fit in an annular recess.

e

5. Applicant's arguments are addressed as follows. It is argued that the letter "e" is directed to "one or more upwardly-projected lips or flanges, e, which prevent the plate d from slipping off the rounded surface of the cartridge in contact therewith". The examiner agrees with this interpretation of the element e. However, this element e that is located on the top of plate d to contact the cartridges also contains a "generally hemispherical configuration" (see figs. 5 and 2). It is further argued that flange e is directed to flanges on the sides of the follower. This is also accurate. However, only the flanges e located on the top of the follower or plate d are being relied upon to meet applicant's claim limitation.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Vieweg or The American Rifleman.

Lewis applies as previously recited. However, undisclosed is a follower fabricated of stainless steel. Vieweg (claim 1) and The American Rifleman (col. 1, No: 7 Clip) each teach a follower fabricated of stainless steel. Applicant is substituting one type of steel follower for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Vieweg or The American Rifleman to the Lewis cartridge magazine and have a cartridge magazine with a stainless steel follower.

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8. Applicant's arguments are addressed as follows. It is argued that the flanges of Lewis are clearly on the sides of the follower. This is accurate but only partially so. The flanges e of Lewis are located on both the sides and the top of the follower plate d. It is further argued that they are not located at or about the center of the follower. Please note that all that applicant has claimed is "a dimple ... extending upwardly from the inwardly extending portion" and this clearly met by Lewis. It is further argued that the dimple of Lewis produces a different effect from applicant's. While this may well be the case. What applicant has claim is "a dimple ... located to thereby fit into the annular recess of a bullet". Since the dimple of Lewis is located on the top of the follower plate d, it is in a location where it would be able to fit into the annular recess of a bullet if the annular recess were to coincide with the location of either of the dimple elements e located on the top of follower plate d. With regard to American Rifleman and Vieweg, these references are not being relied upon to show a generally hemispherical dimple. They are only being relied upon to teach a follower fabricated of stainless steel.

9. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Menneking et al..

Menneking et al. disclose a cartridge magazine system comprising:

- |  |            |
|--|------------|
| a) a hollow case with side, front, and rear faces;             | 1          |
| b) a base plate;   | 1 (bottom) |
| c) a spring;   | 5          |
| d) a steel follower; and                                       | 11, 12     |
| e) a hemispherical dimple located to fit in an annular recess. | 12         |

10. Applicant's arguments are addressed as follows. It is argued that Menneking teaches rollers 12 provided in the middle and rear regions of the base 11 of the platform frame and does

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not teach a single dimple located at or about the middle of the follower. In response, since rollers 12 are circular in nature, they meet the claim limitation directed to “generally hemispherical configuration”. Secondly, there is no claim limitation directed to the location of the dimple. The only claim limitation is directed to “upwardly extending” and “located to thereby fit into the annular recess of a bullet” and both of these claim limitations are clearly met by roller 12 located a top of follower 9, 10, 11.

11. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Motley.

Motley discloses a cartridge magazine system comprising:

- a) a hollow case with side, front, and rear faces; fig. 1, 2
- b) a base plate; fig. 1, 2 (base)
- c) a spring; 6
- d) a steel follower; and 4, 5
- e) a hemispherical dimple located to fit in an annular recess. 5

12. Applicant’s arguments are addressed as follows. With regard to the argument that the rollers 5 of Motley differ structurally. This is accurate. However, they are similar enough to applicant’s claim limitations “a dimple in a generally hemispherical configuration” to meet this claim limitation.

13. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Howard.

Howard discloses a cartridge magazine system comprising:

- a) a hollow case with side, front, and rear faces; figs. 1-3
- b) a base plate; 26
- c) a spring; 36

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- d) a follower; 34
  - e) a hemispherical dimple located to fit in an annular recess; 34 (left side)
  - f) a central section; and 34 (right side)
  - g) an inwardly extending portion. 34 (left side)
14. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Musgrave (313).  
Musgrave (313) discloses a cartridge magazine system comprising:
- a) a hollow case with side, front, and rear faces; figs. 6, 9
  - b) a base plate; 53
  - c) a spring; 3
  - d) a follower; fig. 1
  - e) a hemispherical dimple located to fit in an annular recess; 13
  - f) a central section; and 1
  - g) an inwardly extending portion. 13
15. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Musgrave (313) in view of Vieweg or The American Rifleman.

Musgrave (313) applies as previously recited. However, undisclosed is a follower fabricated of stainless steel. Vieweg (claim 1) and The American Rifleman (col. 1, No: 7 Clip) each teach a follower fabricated of stainless steel. Applicant is substituting one type of follower for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Vieweg or The American Rifleman to the Musgrave (313) cartridge magazine and have a cartridge magazine with a stainless steel follower.

16. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Jestrabek.

Jestrabek discloses a cartridge magazine system comprising:

- |  |           |
|--|-----------|
| a) a hollow case with side, front, and rear faces;             | figs. 1-4 |
| b) a base plate;   | 8         |
| c) a spring;   | 12        |
| d) a follower;   | 11        |
| e) a hemispherical dimple located to fit in an annular recess; | 19        |
| f) a central section; and                                      | 11        |
| g) an inwardly extending portion.                              | 19        |

17. Applicant's arguments filed on 8/9/2004 and 11/01/2004 have been fully considered but they are not persuasive. These arguments have been addressed in the preceding paragraphs of this Office action.

18. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

19. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

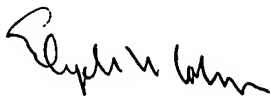


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158. The examiner can normally be reached on Tuesday through Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326. The fax phone number for after final communications is (703) 872-9327.



STEPHEN M. JOHNSON  
PRIMARY EXAMINER

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

SMJ